IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

OP.No. 5541 of 1995(I)

PETITIONERS:
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1. **B.VIJAYAN PILLAI, MANAGER,**
   DISTRICT INDUSTRIES CENTRE, KANNUR.

2. **P.GOPINATHAN PILLAI, PROJECT OFFICER (COIR),**
   ALAPPUZHA.

BY ADV. SRI.ELVIN PETER P.J.
SRI.N.RAGHURAJ

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY**
   TO GOVERNMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF INDUSTRIES AND COMMERCE,**
   THIRUVANANTHAPURAM.

3. **P.C.THANKAN, MANAGER,**
   DISTRICT INDUSTRIES CENTRE, THRISSUR.

4. **A.ABDUL KARIM, DEPUTY DIRECTOR,**
   DIRECTORATE OF INDUSTRIES AND COMMERCE,
   THIRUVANANTHAPURAM.

***ADDL.R5 IS IMPLEADED:**

R5. K.M.JOHNSON,
ASSISTANT DIRECTOR OF INDUSTRIES,
ON DEPUTATION TO DRDA AS ASSTT. PROJECT OFFICER,
(TRAINING AND INDUSTRIES) CIVIL STATION, KAKKANAD.

(*ADDL.R5 IS IMPLEADED AS PER ORDER DTD. 06/06/02 IN
C.M.P.NO.24715/2002)

BY GOVERNMENT PLEADER SRI. P.A. SALIM
BY ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)
SRI.P.GOPAL
SRI.N.MANOJ KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.5541/1995 I

ORDER ON CMP.NOS.9841/1995, 11494/1996, 1672/1996 AND C.M.P.NO.28315/2002 IN O.P.NO.5541/1995 – I

DISMISSED

2/03/2007 **SD/- J.B.KOSHY, JUDGE**

SD/-T.R.RAMACHANDRAN NAIR,JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF JUDGMENT DTD. 2ND FEBRUARY, 1990 IN O.P.NO. 2495/88-V ETC. OF THIS HON'BLE COURT.**

EXT.P2: **COPY OF JUDGMENT DTD. 24TH JUNE, 1993 IN W.A.NO. 432/90 OF THIS HON'BLE COURT.**

EXT.P3: **COPY OF ORDER G.O.(RT) NO.1135/94/ID, DTD. 28/11/1994.**

EXT.P4: **COPY OF ORDER NO.EA7/14033/95 DTD. 30/06/1995 OF THE 2ND RESPONDENT.**

EXT.P4(A): **COPY OF COMBINED SENIORITY LIST OF FEEDER CATEGORIES TO THE POST OF ASSISTANT DISTRICT INDUSTRIES OFFICER APPOINTED/PROMOTED FROM 1/09/1969.**

EXT.P5: **COPY OF REPRESENTATION DTD. 29/08/1995 FILED BY THE 2ND PETITIONER TO THE GOVT.**

EXT.P6: **COPY OF ORDER NO.EA7/21878/95 DTD. 16/01/1996 OF THE 2ND RESPONDENT.**

EXT.P6(A): **COPY OF SENIORITY LIST OF ASSISTANT DISTRICT INDUSTRIES OFFICERS FOR THE PERIOD FROM 1/09/69 TO 15/12/90.**

EXT.P7: **COPY OF SELECT LIST PUBLISHED AS PER NOTIFICATION NO.EE4/35387/96 DTD. 16TH OCTOBER, 1997.**

EXT.P8: **COPY OF ORDER NO.EE4/35387/96 DTD. 20/02/1998 ISSUED BY THE 2ND RESPONDENT.**

4TH RESPONDENT'S EXHIBITS:

EXT.R4(A): **COPY OF THE G.O.(P) NO.94/90 /ID DTD. 28/06/1990.**

..2/-

O.P.NO.5541/1995 I

EXT.R4(B): COPY OF THE PROCEEDINGS OF THE DIRECTOR INDUSTRIES & COMMERCE NO.E.E.-1/5671/97 DTD. 30/03/1999 AND THE RELEVANT PORTION OF THE SENIORITY LIST FOR THE PERIOD FROM 01/09/1969 TO 31/12/1990.

EXT.R4(C): COPY OF THE RELEVANT PORTION OF THE GOVERNMENT ORDER G.O.(RT) NO.703/99/ID DTD. 28/07/1999.

EXT.R4(D); COPY OF THE PROCEEDINGS OF THE DIRECTOR OF INDUSTRIES & COMMERCE NO.E.E.-1/29649/99 DTD. 27/03/2001 AND THE RELEVANT PORTION OF THE SENIORITY LIST FOR THE PERIOD FROM 01/01/1985 TO 31/12/1994.

EXT.R4(E): COPY OF THE PROCEEDINGS OF THE DIRECTOR OF INDUSTRIES & COMMERCE NO.E.E.-1/5671/97 DTD. 30/01/2001 AND THE RELEVANT PORTION OF THE SENIORITY LIST FOR THE PERIOD FROM 01/01/1991 TO 31/12/1996.

EXT.R4(F): COPY OF THE PROCEEDINGS OF THE DIRECTOR OF INDUSTRIES AND COMMERCE NO.E.E-1/20311/97 DTD. 27/01/2001 AND THE RELEVANT PORTION OF THE SENIORITY LIST FOR THE PERIOD FROM 01/09/1991 TO 31/12/1998.

5TH RESPONDENT'S EXHIBITS:

EXT.R5(1): COPY OF THE JUDGMENT IN W.A.NO.414/1990 OF THIS HON'BLE COURT.

EXT.R5(2): COPY OF THE ORDER DTD. 20/12/1990 ISSUED BY THE RESPONDENT.

EXT.R5(3): COPY OF THE PROCEEDINGS OF THE DIRECTOR OF INDUSTRIES DTD. 27/03/2001.

EXT.R5(4): COPY OF THE ORDER DTD. 10/01/1995 ISSUED BY THE RESPONDENT.

EXT.R5(5): COPY OF THE PROCEEDINGS OF THE RESPONDENT DTD. 16/01/1996.

EXT.R5(6); COPY OF THE PROCEEDINGS DTD. 30/01/2001 OF THE RESPONDENT.

EXT.R5(7): COPY OF THE PROCEEDINGS OF THE RESPONDENT DTD. 19/04/1997.

EXT.R5(8): COPY OF THE PROCEEDINGS OF THE RESPONDENT DTD. 12/11/1998.

EXT.R5(9): COPY OF THE PROCEEDINGS OF THE RESPONDENT DTD. 13/07/2001.

/TRUE COPY/

KSS

J.B. KOSHY and T.R.RAMACHANDRAN NAIR, JJ.

O.P. No. 5541 of 1995 I

Dated this the 2nd day of March, 2007

Judgment

Koshy, J.

This original petition is filed contending that petitioners are entitled to get promotion to the post of Deputy Director of Industries and Commerce on the basis of the seniority in the feeder category of Project Officer (Coir)/Special Officer/Deputy Registrar of Co-operative Societies. Petitioners were originally appointed as Junior Co-operative Inspectors as early as on 5.7.1976. They were promoted as Assistant District Industries Officers on 20.12.1990 and first petitioner was promoted as Assistant Registrar of Co-operative Societies on 7.2.1992. Second petitioner was promoted as Assistant Registrar of Co-operative Societies on 17.3.1992. First petitioner was promoted as Deputy Registrar of Co-operative Societies on 3.2.1993 and as Deputy Director of Industries and Commerce on 10.1.1995. Respondents 3 and 4 were promoted as Deputy Director of Industries and Commerce/Manager, District Industries Centre on 28.11.1994. Combined seniority list was filed

wherein respondents 3 and 4 were made senior. Representation filed by the petitioners was rejected and Ext.P6 order was passed and revised seniority list was published by Ext.P9. The whole question is whether promotion to the post of Assistant District Industries Officer and Assistant Registrar of Co-operative Societies should be done on the basis of the amended Special Rules or under the earlier special Rules.

2. In exercise of the powers conferred by sub-section (1) of section 2 of the Kerala Public Services Act, 1968, the Special Rules for the Industries Service was passed as Kerala Industries Service Special Rules, 1990 replacing the Special Rules passed in 1966. Rule 1 of the above Rules reads as follows:

> "1. **Short title and commencement**:-
> (1) These Rules may be called the Kerala Industries Service Special Rules, 1990.
> (2) They shall come into force at once, provided that sub-rule (c) and (d) of rule 3 shall be deemed to have come into force on the 1st day of July, 1983, sub-rule (b) of rule 4 shall be deemed to have come into force on the 31st day of January 1977 and notes under category 2 of Class V of Branch I of Appendix shall

be deemed to have come into force on the 1st day of July, 1983."

For the post of Assistant District Industries Officer, qualification, ratio, feeder category etc. are prescribed as category No.(2) in Class V of Branch I which is as follows:

Branch, Class, Category	Method of appointment	Qualifications
Branch I Class V Category (2)	By transfer from the following categories of the Kerala Industries Subordinate Service -- (i) Industries Extension Officer (ii) Senior Co-operative Inspector	<u>For transfer</u> (i) A Degree of a recognised University or a recognised Diploma in any branch of Engineering or Technology. OR (ii) (a) Minimum General Educational qualification of SSLC Standard and (b) Higher Diploma in Co-operation or Junior Diploma Co-operation awarded by Kerala State Co-operative Union or Co-operative Subordinate Personnel Training, and (c) Pass in Account Test(L) <u>For direct recruitment</u> A degree of a recognised University in any branch of Engineering or Technology.

Note: (i) Appointment by transfer from Categories (i) and (ii) above shall be made in the ratio of 2:1.

(ii) In the absence of qualified hands for appointment by method(i) above, by direct recruitment.

It is the contention of the petitioners that in view of rule 1 retrospective effect is given and in view of the ratio fixed retrospectively, petitioners' chances of promotion earlier are affected and petitioners were considered juniors to respondents 3 and 4, but, there is no dispute to the proposition that if the Special Rules, 1990 are applicable, the seniority list published and promotions effected were correct. Petitioner relied on Ext.P1 judgment. Ext.P1 judgment was overruled by Ext.P2 and Ext.R5 judgments of the Division Bench and, therefore, petitioners cannot get the benefit of Ext.P1 judgment as finding of the Division Bench is binding. It is well settled law that rules can also be made retrospectively, but, in this case, even that contention need not be looked into because promotion to the post of Assistant District Industries Officer as well as subsequent promotions were done after 20.12.1990 whereas the Special Rules were passed and published in the Gazette dated 28.6.1990. Therefore, even on the date of promotion of the petitioners as Assistant District Industries Officers, new Special Rules came into force and thereafter promotions can be effected only as per the Special Rules and there is no question of getting a

vested right by the petitioners against the rules framed. The contention that if petitioners were promoted earlier, whether in view of the retrospective effect, the promotions already granted will be affected, need not be considered in this original petition. There is no such contingency here. In view of the amended Special Rules as well as Ext.P2 and Ext.R5 judgments, we are of the view that there is no basis for the petitioners' claim and hence, the original petition is dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

vaa

J.B. KOSHY AND
T.R.RAMACHANDRAN NAIR, JJ.

O.P. No.5541/95 I

Judgment

Dated:2nd March, 2007